



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live.

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

US EPA RECORDS CENTER REGION 5



478414

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
(800) 451-6027
www.IN.gov/idem

December 19, 2007

VIA CERTIFIED MAIL

Jackie Simmons
Baker and Daniels
300 N. Meridian Street
Suite 2700
Indianapolis, IN 46204

South Properties

Dear Ms. Simmons:

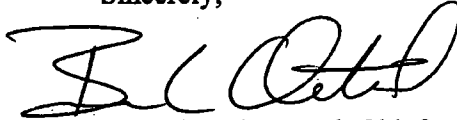
Re: Environmental Restrictive Covenant Approval
Himco Dump Superfund Site
Elkhart, Indiana
Site #: 7500044

The Indiana Department of Environmental Management (IDEM) has reviewed the proposed Environmental Restrictive Covenant (ERC), submitted by you or on your behalf, via e-mail dated November 19, 2007. The ERC was submitted for the following facility: Himco Dump Superfund Site, Elkhart, Indiana. The ERC was submitted as required by the Himco Dump Record of Decision Amendment and the Himco Dump CERCLA RD/RA Consent Decree.

IDEM staff have reviewed the proposed ERC and find it acceptable; therefore, I am approving the ERC as of the date of this letter provided each individual ERC filed on the individual properties specified in the Consent Decree and CERCLA RD/RA contains a certified copy of the warranty deed for the relevant property/parcel with the appropriate legal description stated on the deed. (This should be Exhibit A to the ERC.) If the warranty deed is not included as an exhibit with the recorded ERC, this approval may be deemed invalid at IDEM's discretion. In order to satisfactorily complete the work as contemplated in the Consent Decree, you will need to have the ERC properly executed and recorded with the Elkhart County Recorder's Office within thirty (30) days of the date of entry of the Consent Decree for each individual property. You will also need to provide us with both a certification documenting that the ERC has been recorded and a file-stamped copy of the recorded ERC (including the exhibits). We have enclosed an affidavit form that can be used to provide the necessary certification.

If you have any questions regarding this matter, please contact Jessica Huxhold Fliss of my office at 317/233-2823.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Oertel", written in a cursive style.

Bruce Oertel, Branch Chief
Remediation Branch
Office of Land Quality

BO:jhf:bl

Enclosure – Draft ERC (approved by IDEM)

AFFIDAVIT

I, the undersigned, being duly sworn upon my oath, have personal knowledge of the facts stated herein:

the enclosed copy of the Environmental Restrictive Covenant and its Attachments were recorded in the _____ County Recorder's Miscellaneous Book and were cross-referenced to the recorded deed that concerns the property subject to industrial closure requirements; and

the enclosed copy represents the Environmental Restrictive Covenant and its Attachments in their entirety as agreed to by the Indiana Department of Environmental Management and the property owner.

County Recorder's Book and Page or Instrument Number: _____

Number of Pages Recorded: _____

Signature of Property Owner

Print or type name

Date

Position

Signed before me the _____ day of _____, 20____

Notary Public

My Commission Expires _____

County and State of Residence: _____

**AFFIDAVIT FOR RECORDING OF
AN ENVIRONMENTAL RESTRICTIVE COVENANT**

I, the undersigned, being the age of majority and duly sworn upon my oath, on behalf of Indiana Michigan Power Company, hereby consent to the enclosed copy of the Environmental Restrictive Covenant ("ERC") and its Attachments being recorded by the Performing Settling Defendants (as such term is defined in the "Consent Decree" as referenced in the ERC) in the Elkhart County Recorder's Office and cross-referenced to the deed recorded in Volume 340, Page 820, which is the recorded deed that concerns the property subject to the land/water use requirements contained in the ERC.

Printed Name:
Title:

Date

STATE OF INDIANA)
) SS:
COUNTY OF)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, _____, Indiana Michigan Power Company, an Indiana corporation,, who acknowledged the execution of the foregoing instrument for and on behalf of the Property Owner.

Witness my hand and Notarial Seal this ____ day of _____, 2007.

Residing in _____, Notary Public

My Commission Expires:

County Recorder's Book and Page or Instrument Number: _____

Number of Pages Recorded: _____

ENVIRONMENTAL RESTRICTIVE COVENANT

THIS COVENANT is made this ____ day of _____, 20____, by Indiana Michigan Power Company, an Indiana corporation, f/k/a Indiana & Michigan Electric Company, an Indiana corporation (together with its successors and assignees, collectively "Owner").

Recitals

WHEREAS, Owner owns certain real estate in Elkhart County, Indiana, which is more particularly described in attached Exhibit A and made a part hereof ("Real Estate"), which Real Estate was acquired by deed on January 24, 1974, and recorded on February 16, 1974, in Volume 340, Page 820, in the Office of the Recorder of Elkhart County, Indiana.

WHEREAS, the Real Estate is part of the Himco Dump Superfund Site, which encompasses approximately sixty (60) acres of low-lying marshland in Elkhart County, Indiana (the "Himco Site").

WHEREAS, the Himco Site was placed on the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B, and the United States Environmental Protection Agency ("EPA"), in concert with the Indiana Department of Environmental Management ("IDEM"), and the "Performing Settling Defendants" (as such term is defined in the "Consent Decree" set forth below) proposed that potentially responsible parties implement a remedial action, embodied in a final Record of Decision ("ROD") executed on September 23, 1993. The ROD was amended ("Amended ROD") on September 15, 2004, and represents the EPA and IDEM decisions on the remedial action to be implemented at the Site.

WHEREAS, the remedial action selected by the Amended ROD, and the work to be performed by certain performing defendants, constitutes a responsive action taken or ordered by the President of the United States, and is set forth under the terms and conditions of the Himco CERCLA RD/RA Consent Decree ("Consent Decree"), having been entered by the United States District Court for the Northern District of Indiana, in cause of action *United States of America v. Bayer Healthcare, LLC, et al.*, docket number 2:07cv304(TS).

WHEREAS, the corrective action plan, pursuant to the Consent Decree, was prepared and implemented in accordance with IC 13-25, IC 13-30, and/or other applicable

Indiana laws as a result of a release or the substantial threat of a release of hazardous substances (collectively, "contaminants of concern") relating to the Himco Site which affected the Real Estate. The Performing Settling Defendants, pursuant to the Consent Decree, implemented certain response activities at the Real Estate, including the following: (a) monitoring of the "Work" (as such term is defined in the Consent Decree); (b) verifying data or information submitted to the EPA or IDEM; (c) conducting investigations relating to contaminants of concern at or near the Himco Site; (d) sampling, assessing the need for, planning or implementing additional response actions at or near the Site; (e) assessing implementation of construction quality assurance and quality control practices as defined in the approved construction "Quality Assurance Project Plans"; (f) implementing the Work; (g) inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Performing Settling Defendants or their agents, consistent with Section XXIV of the Consent Decree; assessing Settling Defendants' compliance with the Consent Decree; and determining whether the Himco Site, the Real Estate or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.

WHEREAS, the corrective action plan, pursuant to the Consent Decree, as approved by EPA and IDEM, provides that contaminants of concern will remain in the groundwater and/or in the soil of the Himco Site and/or the Real Estate, and requires that land use restrictions be maintained to prevent future use of the groundwater and to prevent the future use of the land for residential purposes to ensure the protection of public health, safety or welfare, and the environment. A list of the contaminants of concern are set forth in Table 1, attached hereto. The corrective action plan, as outlined pursuant to the Consent Decree, and related site documents are incorporated herein by reference and may be examined at the offices of EPA or IDEM, in the public file.

NOW, THEREFORE, Owner, hereby, in consideration for the promises contained herein, and other good and valuable consideration, imposes restrictions on the Real Estate and covenants and agrees that:

I. GENERAL PROVISIONS

1. Property Conveyance – Continuance of Provisions. The Owner shall prevent any conveyance of title, easement or other interest in the Real Estate from being consummated without adequate and complete provision for compliance with the Consent Decree and prevention of exposure to contaminants of concern as described in paragraph 8, below.

2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees, licensees or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests or persons acting under the direction or control and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement or other conveyance of any interest in all or any part of the Real Estate by any person shall limit the

restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.

3. Binding upon Future Owners. By taking title to the Real Estate, any subsequent owner agrees to comply with these restrictions and terms of this Covenant.

4. Recordation. Unless this Covenant is terminated under paragraph 11, the Owner shall direct the HIMCO Remediation Trust to re-record this Covenant, including any subsequent modifications and amendments, forty-nine (49) years from the date of first recording, or any subsequent recordings, to ensure its continued applicability under the Marketable Title for Real Property Act found in IC 32-20.

5. Written Notice of the Presence of Hazardous Substances. Owner agrees to include in any instrument conveying an interest in any portion of the Real Estate, including, but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances) the following notice provision:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED _____, 200__, RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA ON _____, 200__, INSTRUMENT NUMBER (or other identifying reference) _____ IN FAVOR OF AND ENFORCEABLE BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AND/OR THE PERFORMING SETTLING DEFENDANTS.

6. Notice to EPA, IDEM and Performing Settling Defendants of the Conveyance of Property. Owner agrees to provide notice to EPA, IDEM and Performing Settling Defendants, no later than thirty (30) days after any conveyance of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide EPA, IDEM and Performing Settling Defendants with a certified copy of the instrument conveying any interest in any portion of the Real Estate and, if it has been recorded, its recording reference. Such notice shall also include the name and business address of the transferee.

II. RESTRICTIONS AND OBLIGATIONS

7. The Owner shall:

- (a) Prohibit any activity at the Himco Site that may interfere with the response activities pursuant to the Consent Decree, long-term monitoring or measuring necessary to assure the effectiveness and integrity of any response action, or component thereof, selected and/or undertaken at the Himco Site.

- (b) Not use the Himco Site for residential purposes, including, but not limited to daily care facilities (e.g. daycare centers, schools and senior citizen facilities).
- (c) Neither engage in nor allow the installation or use of private drinking water wells on the Himco Site. There shall be no consumptive, extractive or other use of the groundwater underlying the Himco Site that could cause exposure of humans or animals to the ground water underlying the Himco Site, other than for site investigation and/or remediation purposes, without prior EPA and/or IDEM approval.
- (d) Neither engage in nor allow the digging or drilling into or the excavation of soil below the Himco Site groundcover, not to exceed eighteen (18) inches in depth, anywhere in the Affected Areas of the Himco Site as depicted on Exhibit B without first submitting a work plan for approval by the EPA and/or IDEM at least thirty (30) days prior to the commencement of such work. Any removal, excavation or disturbance of soil from within the Affected Areas of the Himco Site must be conducted in accordance with all requirements of IOSHA/OSHA, and soil that is removed, excavated or disturbed from the Affected Areas of the Himco Site must be managed and disposed of in accordance with all applicable federal and state laws and regulations.
- (e) At the completion of remediation, Owner shall modify this ERC, if EPA and/or IDEM determines that additional land use restrictions are necessary to be protective of human health and the environment as a result of residual contamination that will remain on the Real Estate.

III. ENFORCEMENT

8. Enforcement. EPA, IDEM, the representatives thereof, Performing Settling Defendants and/or other appropriate grantees shall have the right to enforce this Covenant, the restrictions listed in Paragraph 26(b) of the Consent Decree, or other restrictions that EPA and/or IDEM determine are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to the Consent Decree. Further, pursuant to IC 13-14-2-6(5), IDEM may proceed in court, by appropriate action, to enforce this Covenant. Owner agrees that the restrictions are enforceable, and agrees not to challenge the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

9. Term. The restrictions shall apply until EPA and IDEM determine that the contaminants of concern no longer present an unacceptable risk to the public health, safety or welfare or to the environment.

10. Amendment, Modification and Termination. This Covenant shall not be amended, modified or terminated except by written instrument executed among EPA, IDEM, Performing Settling Defendants and Owner at the time of the proposed amendment, modification or termination. Within five (5) days of executing an amendment, modification or termination of the Covenant, such amendment, modification or termination shall be recorded with the Office of the Recorder of Elkhart County, Indiana and within five (5) days after recording, a true copy of the recorded amendment, modification or termination shall be presented to EPA, IDEM and Performing Settling Defendants.

V. MISCELLANEOUS

11. Waiver. No failure on the part of EPA, IDEM or Performing Settling Defendants at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect EPA's, IDEM's or Performing Settling Defendants' right to enforce such term, and no waiver on the part of EPA, IDEM or Performing Settling Defendants of any term shall be taken or held to be a waiver of any other term hereof or the breach thereof.

12. Conflict of and Compliance with Laws. If any provision of this Covenant is also subject of any law or regulation established by any federal, state or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner from complying with any other applicable laws.

13. Changes in Law or Regulation. In the event that the Risk Integrated System of Closure ("RISC") is adopted by rule in Indiana, or in the event of any other change in applicable laws or regulations, this Covenant shall be interpreted so as to ensure the continuing validity and enforceability of the restrictions listed in paragraph 8, above. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RISC guidelines, or policies for environmental restrictive covenants or institutional or engineering controls change as to form or content. All statutory references include successor provisions.

14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the others pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner:
Indiana Michigan Power Company
P.O. Box 16428
Columbus, Ohio, USA 43216

To EPA:
U.S. Environmental Protection Agency
Superfund Division
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

To IDEM:
Indiana Department of Environmental Management
Office of Enforcement
100 North Senate Avenue, MC 60-02
Indianapolis, Indiana 46204-2251

To Performing Settling Defendants
c/o Bayer HealthCare, LLC
777 Old Saw Mill River Road
Tarrytown, NY 10591

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

16. Liability. An Owner's rights and obligations under this instrument terminate upon transfer of the Owner's interest in the Real Estate, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

17. Authority to Execute and Record. The undersigned person executing this Covenant on behalf of the Owner represents and certifies that he or she is duly authorized and has been fully empowered to execute, record and deliver this Covenant.

Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this _____ day of _____, 200__.

Indiana Michigan Power Company

By: _____

Its: _____

"Owner"

STATE OF INDIANA)

) SS:

COUNTY OF)

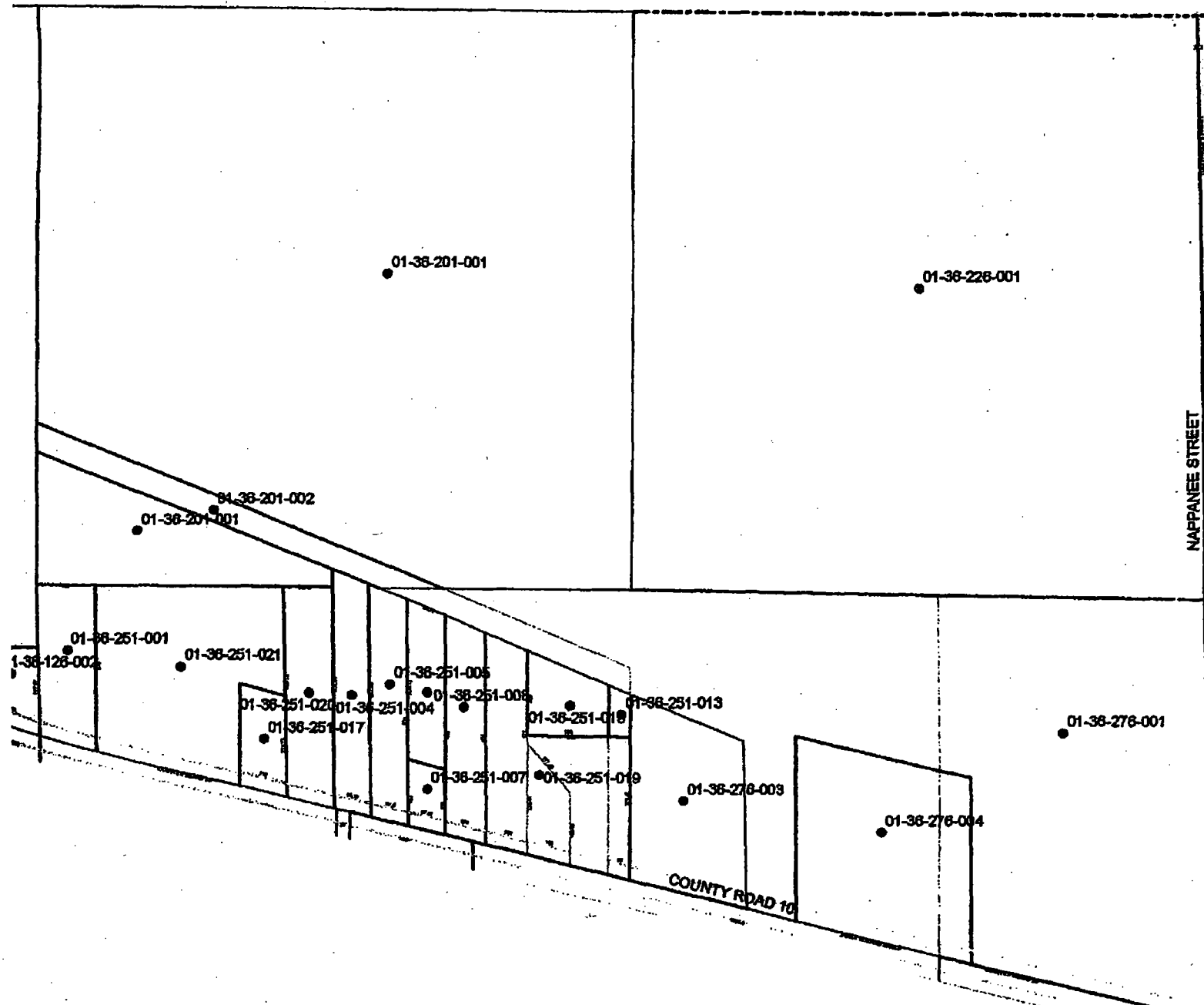
Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, _____, Indiana Michigan Power Company, an Indiana corporation, Owner of the Real Estate more fully described therein, who acknowledged the execution of the foregoing instrument on behalf of Indiana Michigan Power Company.

WITNESS my hand and Notarial Seal this _____ day of _____, 200__.

_____, Notary Public
Residing in Elkhart County, Indiana
My Commission Expires: _____

THIS INSTRUMENT PREPARED BY Christopher J. Spataro, Attorney at Law, Baker & Daniels, LLP, 205 West Jefferson Boulevard, Suite 250, South Bend, Indiana 46601.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Christopher J. Spataro, Baker & Daniels LLP, 205 W. Jefferson Blvd., Suite 250, South Bend, Indiana 46601.



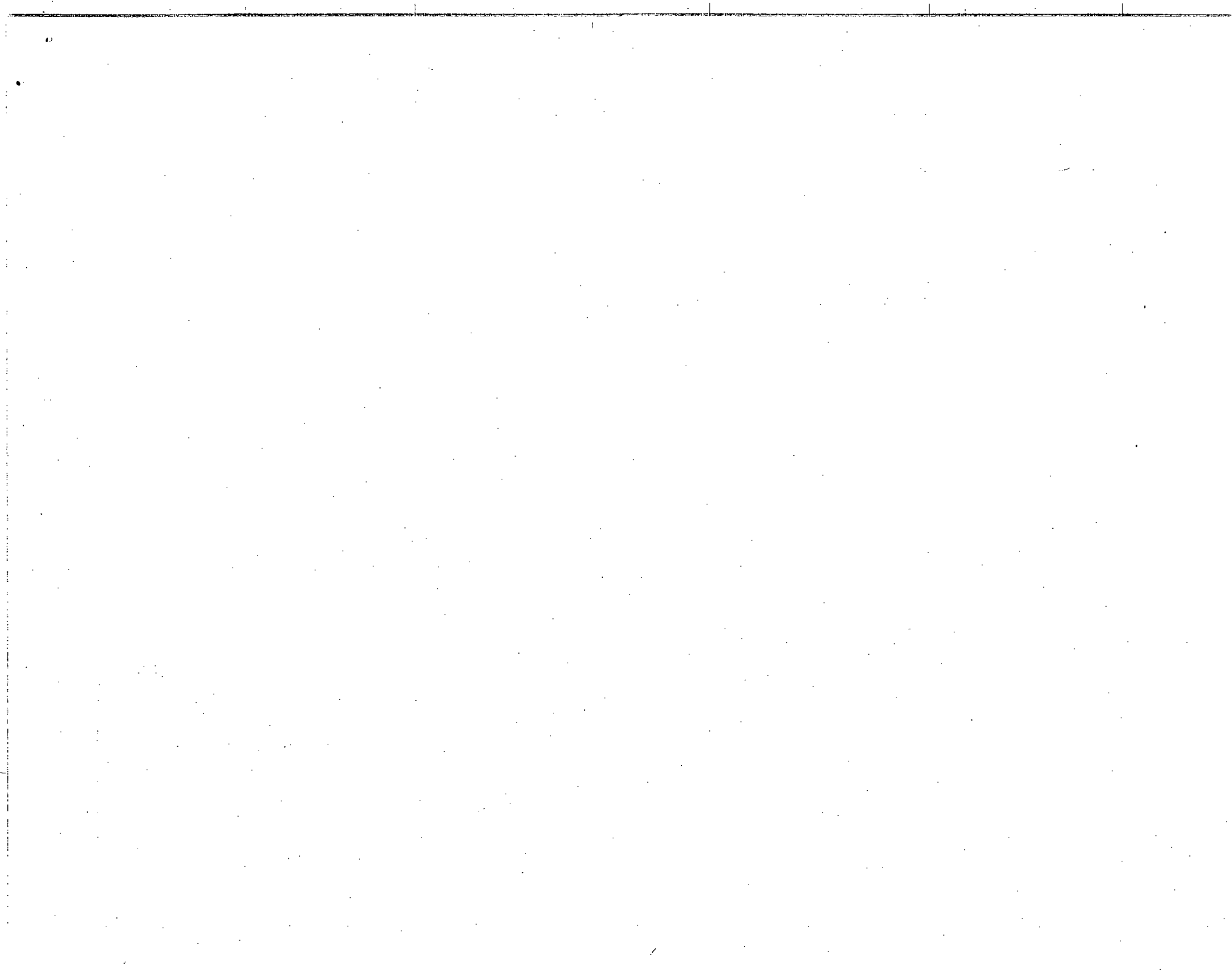


TABLE 1

**LIST OF CHEMICALS OF CONCERN AND CONCENTRATION LEVELS/DETECTED
PARAMETERS**

<p align="center">Southern Downgradient Ground Water</p> <p align="center">Basis: well pair: WT116A/WT119A (1990-2000)</p>	<p align="center">Eastern Downgradient Ground Water</p> <p align="center">Basis: WT101A, WT114A, WT114B, GP16 (all depths), GP101 (all depths), GP114 (all depths)</p>	<p align="center">Eastern Residential Wells</p> <p align="center">Basis: Individual Residential Wells</p>
<p><i>Carcinogens</i> arsenic benzene bis(2-ethylhexyl)phthalate carbazole 1,2-DCP vinyl chloride</p>	<p><i>Carcinogens</i> arsenic benzene bis(2-ethylhexyl)phthalate 1,2-DCP</p>	<p><i>Carcinogens</i> arsenic benzene chloroform 1,2-DCA (EDC) 1,2-DCP vinyl chloride</p>
<p><i>Noncarcinogens</i> antimony iron manganese sodium thallium</p>	<p><i>Noncarcinogens</i> chromium iron manganese sodium thallium</p>	<p><i>Noncarcinogens</i> calcium iron manganese sodium sulfate 1,1-DCA cis-1,2-DCE</p>

EXHIBIT B
MAP DEPICTING THE LOCATIONS OF THE CHEMICALS OF CONCERN

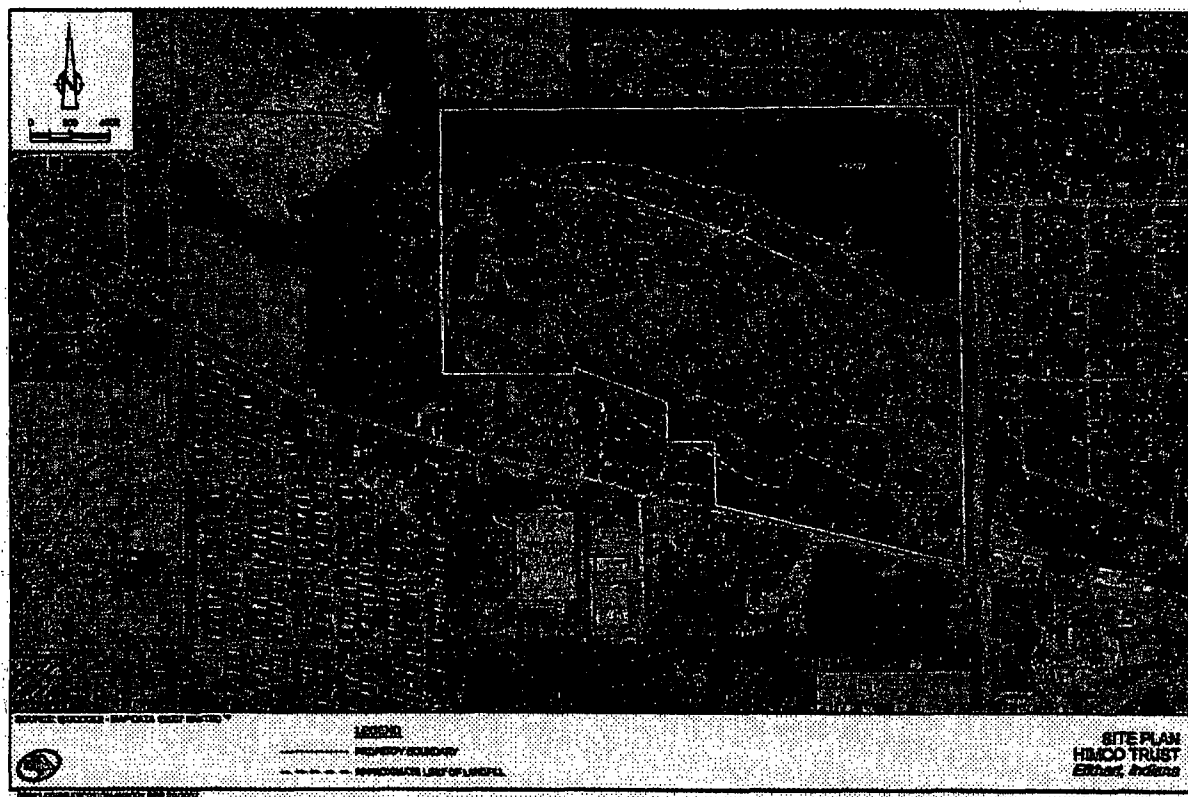


EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

A part of the Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4) of Section Thirty-six (36), Township Thirty-eight (38) North, Range Four (4) East, more particularly described as follows:

Commencing at a point on the East line of the South one-half (S1/2) of the Northeast Quarter (NE1/4) of said section Thirty-six (36), Three hundred ninety-seven and thirty-five hundredths (397.35) feet North of the Southwest corner of the Northwest Quarter (NW1/4) of Section Thirty-one (31), Township Thirty-eight (38) North, Range five (5) East; thence North seventy-seven (77) degrees thirty-seven (37) minutes West along the centerline of the Fort Wayne Road, five hundred fifty-two and seventy-five hundredths (552.75) feet for the beginning point of this description; thence continuing North seventy-seven (77) degrees thirty-seven (37) minutes west along the centerline of said Road, four hundred (400) feet; thence North two (2) degrees six (6) minutes West four hundred thirty (430) feet; thence South seventy-seven (77) degrees thirty-seven (37) minutes East four hundred (400) feet; thence South two (2) degrees six (6) minutes West four hundred thirty (430) feet to the place of beginning. SUBJECT to Public Highway.

Parcel No.: 20-01-36-276-004.000-006

Property Address: 0 County Road 10, Elkhart, Indiana